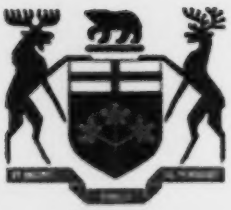
Ontario Civilian Commission on Police Services

Annual Report



2002

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Mission Statement

The Ontario Civilian Commission on Police Services is an independent oversight agency committed to serving the public by ensuring that adequate and effective policing services are provided to the community in a fair and accountable manner.

Chair's Message

I am pleased to present the Annual Report for the Ontario Civilian Commission on Police Services for 2002/2003.

The following quote, taken from Everyday Justice, the Report of the Agency Reform Commission on Ontario's Regulatory & Adjudicative Agencies, outlines the eight common goals that are critical:

1. Fairness: The provision of service and performance of statutory functions in an impartial, lawful, unbiased and just manner.

2. Accessibility: The ability to provide information and services that are simple and easy to use.

3. Timeliness: The performance of tasks within established time frames based on reasonable expectations.

4. Quality and Consistency: The production of accurate, relevant, dependable, understandable and predictable information and results, with no errors in law or fact.

5. Transparency: The use of policies and procedures that are clear and understandable to everyone involved.

6. Expertise: The possession and use of the skill, knowledge and technical competence required to discharge all statutory responsibilities and maintain public confidence.

7. Optimum cost: The provision of services at a cost that is based on best practices and is cost effective for everyone involved.

8. Courtesy: The demonstration of respect to everyone who works in and/or comes into contact with the agency.

The Ontario Civilian Commission on Police Services subscribes to these principles in our dealings with the public, police stakeholders and government and community agencies. Our focus continues to be on enhancing the adequacy and effectiveness of policing in Ontario.

You will see these goals or principles reflected in the way in which we deliver our services and in the printed materials we produce. This

includes brochures outlining the public complaints process in English, French and 21 other languages, including Polish, Cantonese, Oji-Cree, Urdu and Tagalog.

We continue to reach out to the community and police stakeholders through participation in conferences and community information sessions. We have embarked on a comprehensive review of the Commission's Rules of Practice to ensure they continue to be relevant and fair to all. Our consultations are expected to be complete early in 2003.

Murray W. Chitra, Chair
Ontario Civilian Commission on Police Services

Role of the Commission

The Ontario Civilian Commission on Police Services is an arm's length, quasi-judicial agency of the Ministry of Community Safety and Correctional Services. The Commission reports to the Minister of Community Safety and Correctional Services.

The mandate and duties of the Commission are set out in various sections of the *Police Services Act.* They are primarily adjudicative in nature and include:

- hearing police officer appeals of disciplinary penalties;
- adjudicating disputes between municipal councils and police service boards involving budget matters;
- conducting hearings into requests for the reduction, abolition, creation or amalgamation of police services;
- conducting investigations and inquiries into the conduct of chiefs of police, police officers and members of police services boards;
- determining the status of police service members;
- conducting reviews of local decisions relating to public complaints at the request of complainants; and,
- general enforcement relating to the adequacy and effectiveness of policing services.

In Ontario, police services and police services boards are ultimately accountable to the public through the Commission.

Summary of Commission Powers

1. Authorization for the reduction or abolition of municipal police services, the amalgamation of police services; the creation of a new police service; alternative methods of providing police services; (sections 5, 6, 40)

2. Conducting inquiries, on its own motion, in respect of a complaint or complaints made about the policies of or services provided by a police force or about the conduct or work performance of a police officer and the disposition of such complaints; intervene at any stage in the complaints process and assign the review or investigation of or hearing into a complaint to another police force; (sections 73(1), 22(e.1))

3. Conducting reviews, at the request of a complainant, or on its own motion into the disposition of complaints; (sections 22(1)(e.1), 71)

4. Making recommendations with respect to the policies of or services provided by a police force and the administration of the public complaints process; (section 22(e.2))

5. Adjudicating disputes between municipal councils and police services boards about the adequacy of annual estimates or budgets; (section 39)

6. Approval of the appointments of First Nations Constables to perform specified duties in designated geographic areas; (section 54)

7. Hearing appeals with respect to disciplinary penalties; original proceedings against a chief of police; appeals from discharge or retirement where disability renders a member incapable of performing essential duties of the position; (sections 47, 65(9), 70)

8. Making determinations in disputes as to whether a person is a member of a police service or a senior officer, approval of creation of more than two categories within a police force for purposes of collective bargaining; (sections 116, 118)

9. Intervening when it finds that a municipal police force is not providing adequate and effective police services; determining whether or not a police services board has flagrantly or repeatedly failed to comply with prescribed standards; making interim orders without notice and without holding a hearing, where an emergency exists; (sections 9, 22, 23, 24)

10. Conducting inquiries into the conduct or performance of duties of a municipal chief of police or police officer, an auxiliary member, special constable or board member, the administration of a municipal police force, the manner in which police services are provided, policing needs; conducting investigations with respect to municipal policing matters; and, at the request of the Lieutenant Governor in Council, inquiring into any matter relating to crime or law enforcement (sections 25, 26).

Commission Organization

In 2002 the Commission had a full-time Chair and a Vice Chair, Complaints. There were eleven part-time members, all of whom are civilians. Members are normally appointed by Order-in-Council for terms of 3 years. They may be reappointed to serve for a maximum of 2 three-year terms. The men and women who serve on the Commission represent a cross-section of professions and communities across Ontario.

The full Commission meets in downtown Toronto on the second Monday of each month. Meetings are open to the public, except for those matters that deal with confidential personnel, financial or security issues. Members also participate regularly on panels to review local decisions about the classification and investigation of public complaints about the conduct of police officers. They also preside at various types of quasi-judicial proceedings such as hearings.

The Commission is structured into two operational units.

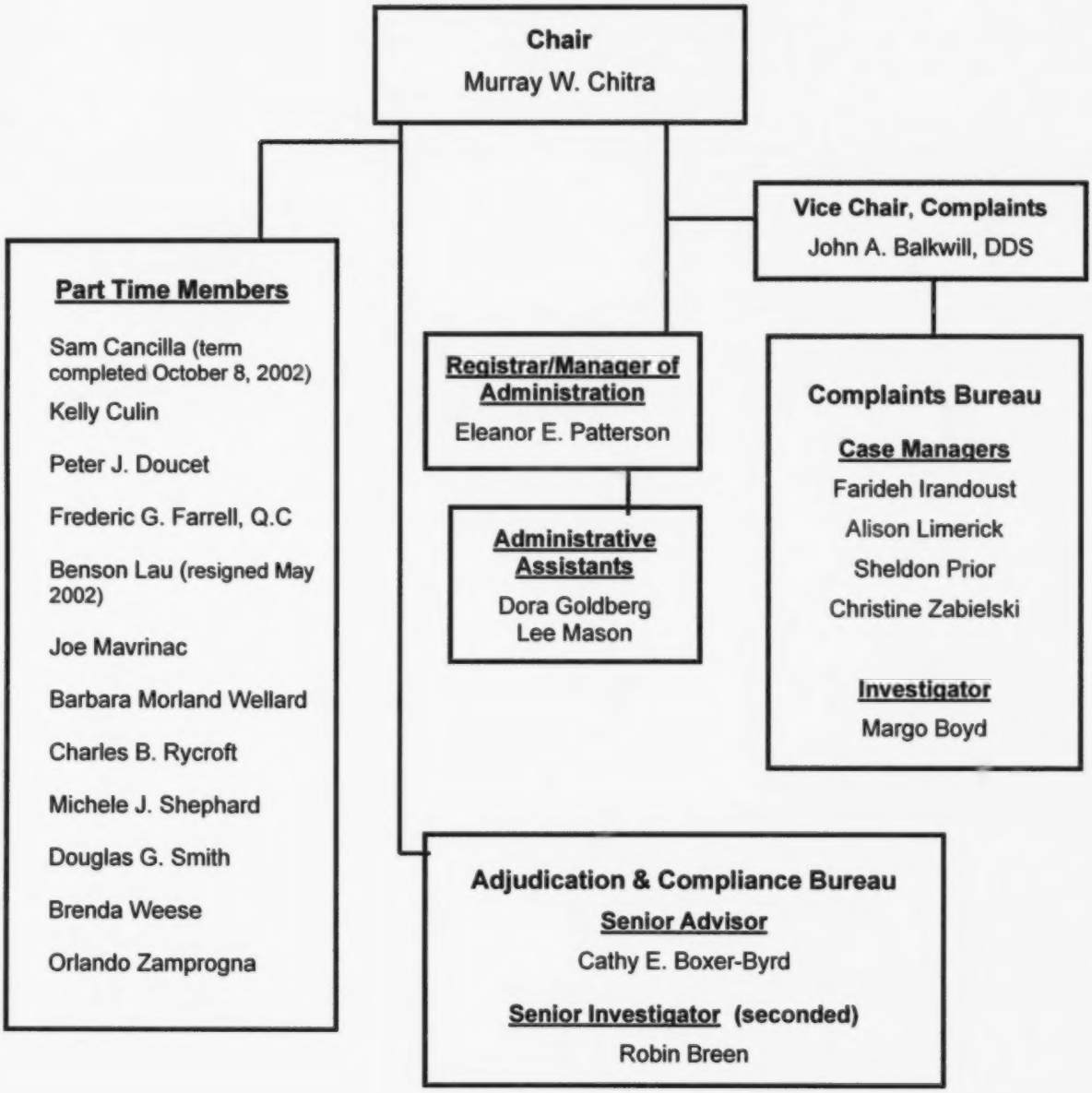
1. The Adjudication & Compliance Bureau deals with matters relating to the Commission's adjudicative functions. These include acting as an appellate body for appeals of police officer disciplinary penalties and a variety of activities relating to the compliance of police organizations with the adequacy and effectiveness provisions of the Act.

2. The Complaints Bureau focuses on the discharge of the Commission's mandate with respect to the administration and review of public complaints, as contained in Part V of the Act.

There is a small group of administrative, investigative and advisory staff supporting the work of the Commission.

Organization Chart – 2002

Ontario Civilian Commission on Police Services



Members of the Commission

Murray W. Chitra – Chair

Prior to his appointment to the Chair of the Commission, Mr. Chitra was the Legal Director of the Ontario Insurance Commission (OIC) for four years. As well, Mr. Chitra worked for ten years with the Legal Services Branch of the Ministry of Correctional Services assigned for six years as Legal Director. He was called to the bar in Ontario in 1980. Mr. Chitra is the President of the Society of Ontario Adjudicators and Regulators (SOAR) and Vice-President of the Council of Canadian Administrative Tribunals (CCAT).

John A. Balkwill, D.D.S. – Vice-Chair, Complaints

Before joining the Commission, Dr. Balkwill practiced dentistry from 1971 – 1999. He served on the Board of Canadian Ports Corporation for nine years and additionally, was Chair of the Ports Canada Police. Dr. Balkwill is the past President of his region's Rotary Club and was a founding member of his community's Chamber of Commerce.

Sam Cancilla - Member

Mr. Cancilla, a businessman, served as a City alderman from 1985 to 1992. During that time, he was a municipal representative on the Police Services Board, assisting in the transition from the *Police Act* to the *Police Services Act, 1990*, which came into effect in 1991. He has been active in community affairs for many years and has served on the Board of the Royal Victoria Hospital Foundation.

Ernest (Kelly) E. Culin – Member

Mr. Culin is the owner of a general insurance agency in Oakville. He is a former member of the R.C.M.P. He has served on various boards and community organizations, and was a 10 year member of the Ontario Environmental Assessment Board. Prior to his appointment to the Commission, he served as a member and vice-chair of the Halton Regional Police Services Board.

Peter J. Doucet - Member

Mr. Doucet is a lawyer who was called to the Bar in 1984. He is currently the principal of a broadly-based legal practice serving clients from Northern Ontario, the Province and various regions of Canada, the U.S. as well as internationally. He is actively involved in the community, but his interests extend to provincial, national and international issues on both a business and personal level. Mr. Doucet is fluently bilingual.

Frederic G. Farrell, Q.C. - Member

Mr. Farrell was called to the Bar in 1973, appointed Queen's Counsel in 1985 and received a Master of Law Degree in Labour Relations in 1988. He is currently a counsel with a law firm located in Southwestern Ontario and is the chief agent in Canada for Royal Maccabees Life Insurance Company. Mr. Farrell is a past President, and present Director and Fellow of both local and international distinguished organizations.

Benson Lau, M.D. – Member

Dr. Lau, a family physician, is currently the Medical Director of a medical center located in Toronto, Ontario. Until his appointment to the Commission, Dr. Lau was Chair of the Southeast Asian Community Police Liaison Committee. As well, he is presently Vice-President of the Mon Sheong Foundation, a charitable organization dedicated to the promotion of Chinese culture, caring for the elderly, encouraging the young and providing programs and services.

Joseph (Joe) Mavrinac - Member

Mr. Mavrinac was for many years the owner of a number of hotels. He subsequently served six consecutive terms as Mayor of his northern community. Prior to his appointment to the Commission he spent a two-year term as Chair of the Ontario Realty Corporation. He has served as President of three hotel/motel associations, President of the Association of Municipalities of Ontario and Director of the Federation of Canadian Municipalities.

Barbara Morland Wellard – Member

Ms. Wellard was called to the bar in 1980 and is currently a partner in a law firm located in a Northern community. She served as part-time member of the former Board of Inquiry established under the authority of the *Police Services Act*, 1990. Ms. Wellard was a founding member and Chair of the Board of a Transition House, which housed and assisted abused women and their children. Ms. Wellard continues to be active with many other community organizations.

Charles B. Rycroft – Member

Mr. Rycroft is a businessman and has been involved in the manufacturing industry for 28 years. He is a veteran of the Royal Canadian Armoured Corps and the Royal Canadian Air Force where he served from 1943 to 1946. He is past president of the Ontario Regiment Association and Durham Region's Rotary Club. Mr. Rycroft served as Special Investigator and Intelligence/Liaison Officer for the Liquor Licence Board of Ontario from 1982 to 1989. He was also a member for two school boards in his community and served as a member of the Guaranty Trust Advisory Board.

Michele J. Shephard – Member

Ms. Shephard is a past member of the Board of Directors for the Women's Habitat of Etobicoke, a shelter for abused women and their children. She chaired the Fund Raising Committee for four years and the Properties Committee for three years. Ms. Shephard was also a volunteer with the Children's Aid Society of Metropolitan Toronto and has been involved in many community fund raising activities in the Greater Toronto Area. Ms. Shephard is a former member of the Toronto Real Estate Board and since 1974 has been a successful businesswoman.

G. Douglas Smith – Member

Mr. Smith is a lawyer who was called to the Bar in 1975 and is the founding member of the law firm of Smith Hardy & Miller. He is a former member of his community's Volunteer Fire Department and also a former member of the Council of the Canadian Bar Association Ontario and is a former Director of the Almaguin Health Services Board.

Brenda L. Weese - Member

Mrs. Weese is a nurse currently working in geriatric medicine. Her experience includes nine years in municipal government, eight years of which were as Reeve of her municipality, with one year served as Warden of an Eastern Ontario county. Mrs. Weese served on the executive for the Business and Professional Women's Club. She also served two years as chairperson of the Social Service Committee and one year as chairperson of the Waste Management Committee. Mrs. Weese is active in local hospital and Children's Aid Society fundraising and served a two-year term on the area's Children's Aid Society Board of Directors.

Orlando Zamprogna – Member

Mr. Zamprogna is a professional engineer and currently is employed at a University in southwestern Ontario. He served for nine years as a member of his city's Police Services Board. He was also elected as a municipal councilor and Deputy Mayor in his community. Mr. Zamprogna has served on many public boards and committees as well as been involved in several charitable organizations.

Commission Budget - 2002

The annual budget for the Ontario Civilian Commission on Police Services was $1,662,300. The allocation has remained unchanged for the last four years.

The following is a breakdown of the allocated budget:

ITEM	ALLOCATION ($000)
Salaries & Wages	1,201.6
Employee Benefits	224.7
Transportation & Communications	52.7
Services	153.8
Supplies & Equipment	28.5
Transfer Payments •	1.0
Total	1662.3

• Statutory Appropriation for the costs of Hearings under the *Police Services Act*

The Year in Review

Inquiries, Investigations and Fact-Finding Reviews

A formal public inquiry is commenced after the Commission is satisfied that based on a review of the evidence that has been collected through a formal investigation, this is the only remedy available.

Section 25 of the *Police Services Act* provides that the Commission may, "at the Solicitor General's request, at a municipal council's request, at a board's request or of its own motion, investigate, inquire into and report on:

(a) the conduct or the performance of duties of a police officer, a municipal chief of police, a special constable, a municipal law enforcement officer or a member of a board;

(b) the administration of a municipal police force;

(c) the manner in which police services are provided to a municipality;

(d) the police needs of a municipality.

Initiation of section 25 inquiries is a serious, resource-intensive process with the potential for negative consequences for members, chiefs of police and police services boards found to be in non-compliance. These can include demotion, dismissal, suspension or revocation of an appointment.

In 1998 the Commission initiated an innovative approach to addressing those issues that were deemed to be of concern, but not falling within the parameters of a full-scale inquiry – the Fact-Finding review. This approach continues today.

Quinte West Police Service - Report of an Investigation Pursuant to Section 25 of the Police Services Act

In January 2002 the Commission released its report on its investigation into allegations against certain members of the Quinte West Police Service.

Four allegations had been made in an anonymous letter delivered to the Commission in early 2001. In view of the seriousness of the allegations, the letter was forwarded to the Quinte West Police Services Board. Initially, the Board informed the Commission that it proposed to take no action based on legal advice that the unsigned letter was not a public complaint within the meaning of Part V of the *Police Services Act*. Subsequently, the allegations became the subject of considerable speculation and interest in the community. In late summer, Council of the City of Quinte West requested that the Commission undertake an investigation. The Quinte West Police Services Board later endorsed the request.

The letter contained an allegation of sexual assault that was investigated by the province's Special Investigations Unit, pursuant to its mandate to investigate the circumstances of serious injuries that may have resulted from criminal offences committed by police officers. The SIU found the allegation to be unsubstantiated. Commission staff investigated the remaining 3 allegations about police response to a domestic dispute involving a senior officer; personal use of information from police databases and inappropriate discounts on repairs to a member's vehicle.

To ensure consistency and fairness, Commission staff adopted a standardized approach to the investigation, particularly the interview process. Prior to each interview, the subject was advised of the nature of the inquiry and given a general outline of the questions that would be posed. Everyone had the opportunity to consult with counsel or, where applicable, an association representative. At the outset of each interview the subject was informed it was not a criminal investigation and if the status changed they would be so advised and the interview terminated. Each interviewee was informed that *Police Services Act* disciplinary action could result if warranted. The interviews were audio recorded and Service members were provided with copies of the interview transcripts.

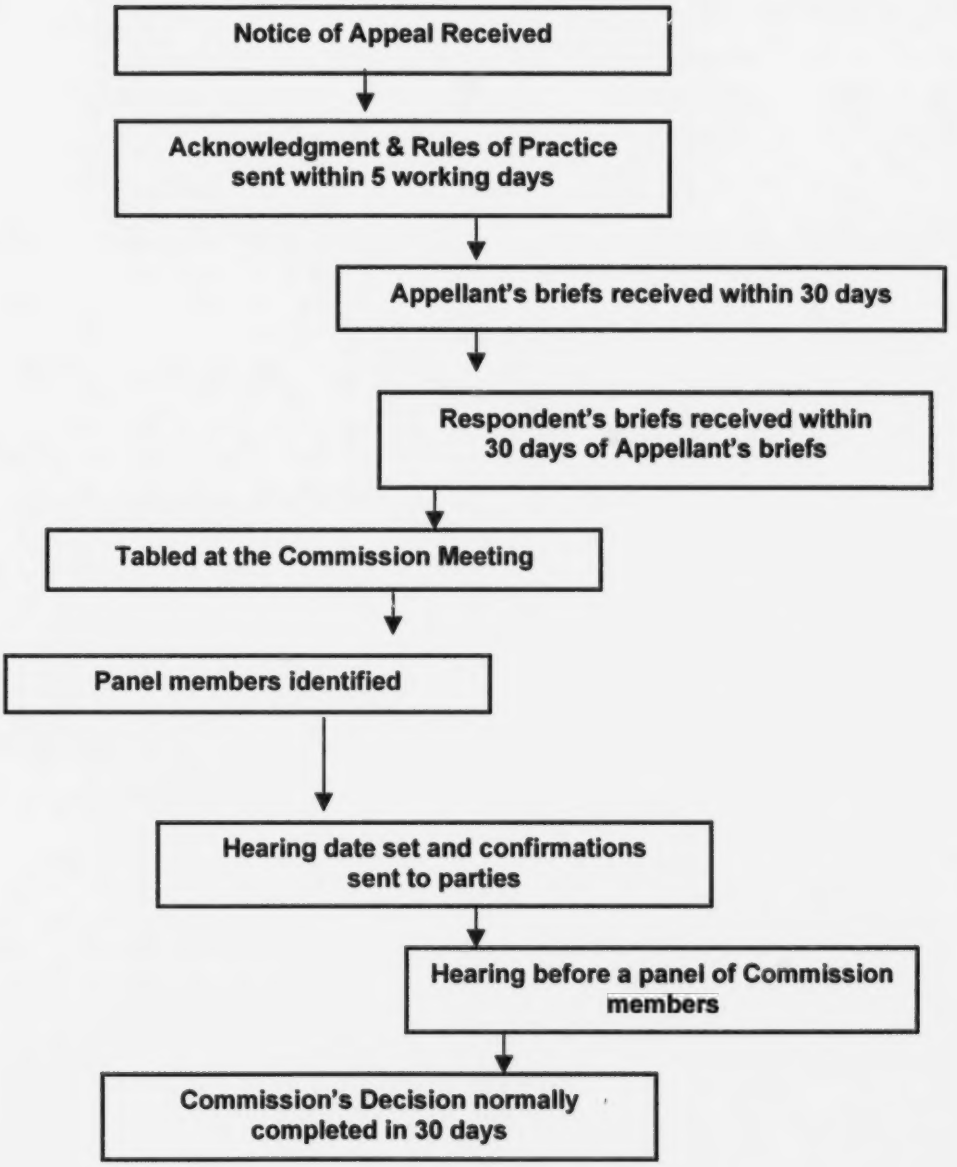
In the course of the five-month investigation 12 people were formally interviewed including 6 serving and past members of the Service, 5 civilians and a member of the Police Services Board. The Commission investigators also reviewed relevant documents including: board minutes, rules and regulations, policies and procedures, occurrence reports, officer notes, correspondence, internal memoranda and media clippings.

The Commission determined there was no clear and convincing evidence to support a finding of misconduct against any member of the Quinte West Police Service with respect to the 3 allegations. However, during the course of the investigation it became apparent that a number of systemic concerns should be addressed for the betterment of the Quinte West Police Service. The report made a number of recommendations designed to enhance the administration of the Service. The Commission also directed staff to monitor the Quinte West Police Service and report on the status of implementation of Commission recommendations and other relevant issues in 6 months.

Appeals

The Commission heard 14 appeals during 2002. Thirteen involved officer appeals relating to disciplinary penalties; one was an appeal of a termination of employment. A full copy of the text of the decisions can be accessed through the Commission web site http://www.occps.ca/.

Appeal Process


Notice of Appeal Received
Acknowledgment & Rules of Practice sent within 5 working days
Appellant's briefs received within 30 days
Respondent's briefs received within 30 days of Appellant's briefs
Tabled at the Commission Meeting
Panel members identified
Hearing date set and confirmations sent to parties
Hearing before a panel of Commission members
Commission's Decision normally completed in 30 days

Overview of Appeal Cases Heard – 2002

Officer/Police Service/Complainant	Hearing Date	Outcome
ARMSTRONG and Peel RPS	April 4/02	Decision - July 18, 2002 Conviction and penalty stand.
CATE and Peel RPS	Oct. 15/02	Decision - December 5, 2002 Conviction overturned.
DEANE and OPP	Sept. 23-24/02	Withdrawn - September 20, 2002
FAVRETTO and OPP	Sept. 11 and 20/01	Decision - February 13, 2002 Penalty is varied.
FRIGHT and Hamilton PS	Sept. 10/02	Decision - November 18, 2002 Appeal of finding of neglect of duty dismissed
GODFREY (OPP) and Linda Parlardg (Complainant)	Nov. 26/01	Decision - January 15, 2002 Appeal dismissed
GRBICH (Aylmer PS) and Bradley Christian (Complainant)	July 17/01	Decision - February 13, 2002 Leave to Appeal granted
GRBICH (Aylmer PS) and Bradley Christian (Complainant)	May 6, 2002	Decision - August 9, 2002 Appeal dismissed.
GROOT and Peel RPS	Feb. 12/02	Decision - April 5, 2002 Appeal against penalty denied

Overview of Appeal Cases Heard – 2002

Officer/Police Service/Complainant	Hearing Date	Outcome
HOLDER and OPP	Dec. 4/01	Decision - May 31, 2002 Appeal dismissed
KYLE and York RPS	Motion heard Nov. 26/02	Decision - November 29, 2002 Automatic stay in the demotion lifted
PRECIOUS and Hamilton PS	Nov. 6/01	Decision - May 10, 2002 Penalty varied
SHAW and Windsor Police Services Board	Oct. 3/02	Decision - December 3, 2002 Remitted to the police services board for a hearing under s.47 of the Act
WAGNER and OPP	Nov. 19/02	Withdrawn - November 18, 2002

Summary of Selected Disciplinary Appeal Decisions

Linda Parlardg (Appellant) and Sergeant Patrick Godfrey, Ontario Provincial Police (Respondents)

Heard: November 26, 2001
Date of Decision: January 15, 2002

On October 4, 1999 the Appellant attended at her former matrimonial home after a six-month absence, accompanied by a friend, to retrieve some clothing, without notifying her estranged spouse, Robert Parlardg. The Appellant alleged that he pushed her and threatened to kill her. Some two hours later, after reflecting upon the matter, the Appellant reported the assault and threat to the Gravenhurst Detachment of the OPP.

The constable who interviewed the Appellant discussed the matter with his supervisor, Sergeant Godfrey, including the Appellant's advice that her husband kept guns in the house, as well as her wish that he not be arrested in front of their 18-year old son. Her husband was eventually charged but was found not guilty on the threatening charge; with respect to the assault charge, he was required to enter into a peace bond. Sergeant Godfrey was charged with neglect of duty: in failing to promptly have her husband removed, in failing to seize firearms from the home, and in failing to comply with policy on domestic issues. The Hearing Officer found Sergeant Godfrey not guilty on all counts.

The Appellant alleged that the Hearing Officer erred in his conclusions as to both facts and findings of credibility. She argued that her husband should have been arrested and charged and his firearms seized on October 4, 1999. Further, she asserted that there were procedural flaws in the hearing process, and she took issue with the conduct of counsel for Sergeant Godfrey during cross-examination. In reply, the Respondent OPP maintained that it prosecuted Sergeant Godfrey according to the highest standards, and pointed out that the Appellant participated throughout. Counsel for Sergeant Godfrey denied any impropriety in her handling of witnesses, and argued that there were no grounds for interfering in the Hearing Officer's decision.

Appeal dismissed.

There were no obvious flaws in either the process or the outcome. There was ample evidence to support the Hearing Officer's decision. The primary reason for the Appellant's complaint to the OPP was to secure their assistance in retrieving her belongings, not fear of her husband. Sergeant Godfrey acted reasonably, and the Hearing Officer rightly concluded that he was not guilty of neglecting his duties. As for the hearing process, the panel could find no fault with either the OPP's prosecution or with the conduct of counsel for Sergeant Godfrey; indeed, all individuals involved displayed a "high standard of professionalism."

Constable Adam Cate (Appellant) and Peel Regional Police Service (Respondent)

Heard: October 15, 2002
Date of Decision: December 5, 2002

On October 11, 2000 Constable Cate was convicted of deceit, contrary to s. 2(1)(d)(ii) of the Code of Conduct. Specifically, the Hearing Officer found that Constable Cate wilfully made a false statement pertaining to his official duties, by denying that he possessed notebooks for which he had signed.

The notebooks in question were Constable Cate's notebooks from 1987 to 1994. He had been ordered to surrender all his notebooks, but was able to produce only 15 of 59 notebooks. Constable Cate maintained throughout that he didn't have the notebooks because they hadn't been returned to him following an earlier internal investigation. In convicting the Appellant of deceit, the Hearing Officer relied on a receipt signed by Constable Cate dated June 15, 1995 entitled "Return of Notebooks & Traffic Ticket Books to Constable A. Cate". The document referred to 56 notebooks and 46 traffic books. The Hearing Officer rejected Constable Cate's explanation, namely that he had signed the receipt merely to acknowledge receiving a copy of the document, not as an acknowledgment of personal possession of the notebooks.

Before Constable Cate was sentenced, the missing notebooks were found in a locked and secured storage area of the Service, to which the Appellant had no access. In light of this new information, the Hearing Officer accepted the prosecutor's suggestion of borrowing the concept of mistrial. He declared a mistrial and set a new date for hearing. In a decision dated October 2, 2001, the Commission ruled that the Hearing Officer had no authority to declare a mistrial. The appeal proceeded against the outstanding conviction on the charge of deceit. At the outset, counsel for the Appellant brought a motion to introduce fresh evidence, concerning the discovery of the notebooks in the supply room. On the merits of the appeal, counsel argued that the conviction should be overturned, since the Hearing Officer's findings contained numerous errors. The evidence didn't support a finding of misconduct, and in light of the discovery of the notebooks the only fair course was to stay the deceit charge.

Motion to admit new evidence granted. Conviction overturned.

The new evidence was relevant, credible and had the potential to affect the result of the appeal. Exercising its jurisdiction pursuant to s. 13.3 of the Commission's Rules of Practice and pursuant to s. 70(5) of the Police Services Act, the Commission received the new evidence. Founded as it was upon manifest error and erroneous conclusions, the conviction could not stand. Constable Cate had no access to the locked storage room, where the majority of the notebooks were located. Clearly he didn't have possession of them. Furthermore, the fact that he had possession of one notebook was insufficient to support a finding of misconduct. The notebook had not been "signed out", but the uncontradicted evidence of Constable Cate was that he received that particular notebook from a superior officer before the sign out system was in place. In any event, the sign out system was haphazard and inaccurate. Such evidence fell short of the required standard of proof; it was not weighty, cogent and reliable. Moreover, the mere signing of the receipt was not evidence of deceit. In that regard, the Commission reiterated its previous remarks about the distinction between inaccurate statements and deceitful statements, the latter requiring an element of intent.

Deborah Shaw (Appellant) and Windsor Police Services Board (Respondent)

Heard: October 3, 2002
Date of Decision: December 3, 2002

JURISDICTION - Appeal pursuant to s. 47(5) of Police Services Act from termination of employment - Appellant civilian employee with disability - Board argued Commission lacked jurisdiction over employment matter which was governed by collective agreement - Termination of employment of disabled member governed by s. 47 of Act - Board failed to comply with requirements of s. 47 - Matter remitted to Board with direction to apply s. 47 process - Preliminary motion dismissed.

DISABILITY - Appeal pursuant to s. 47(5) of Police Services Act - Board asserted civilian employee terminated on grounds of innocent absenteeism and matter governed by collective agreement - Board cannot avoid statutory process in s. 47 by re-casting dispute as issue of contractual interpretation - Board directed to apply s. 47 process - Board required to determine whether Appellant may be accommodated short of undue hardship - Preliminary motion dismissed.

Deborah Shaw, a civilian member of the Windsor Police Service, appealed the termination of her employment by the Windsor Police Services Board on February 7, 2002. Ms. Shaw was hired in 1988 as a clerk. She went off work in 1991 as the result of injuries suffered from an off-duty automobile accident. She remained off work essentially for the next 11 years. Ms. Shaw exhausted various benefit entitlements under the collective agreement, but retained her status as an employee. In 1999 the Chief took steps to sever the employment relationship, on the grounds of abandonment; this was forestalled by the intervention of the Police Association. A modified work plan was negotiated, with a return to work date of July 8, 2001. On the eve of her return to work Ms. Shaw's husband suffered a stroke, and subsequently passed away. As a result, she became depressed, and her physician moved the "fit to return" date to March 1, 2002. The Chief recommended to the Board that she be terminated on the ground of abandonment. Pursuant to s. 47(5) of the Police Services Act Ms. Shaw appealed the Board's decision to terminate her employment.

Counsel for Ms. Shaw argued that the proceeding before the Board failed to fulfill the requirements of s. 47, in that the proceeding wasn't a proper hearing, the decision wasn't supported by the evidence of two medically qualified practitioners, and the proceeding didn't address the question of accommodation. The Board argued that the Commission lacked jurisdiction, because the decision to terminate was made on the grounds of innocent absenteeism, and was thus a matter for determination in accordance with the grievance and arbitration provisions of the collective agreement between the Board and the Association. Counsel argued that the Commission had no authority to grant relief under s. 47 from a decision that wasn't even made under that section.

New hearing directed.

The Commission had jurisdiction. The Board failed to comply with the requirements of s. 47. It was undisputed that the Appellant was disabled to some degree. Any termination of her employment based on capacity to perform her job was governed by s. 47. The Board could not avoid the statutory process codified in s. 47 by re-casting the dispute as a matter of contractual interpretation. Specifically, prior to discharging the Appellant the Board could not avoid its obligation to hold a hearing, receive medical opinions and deal with the issue of whether the Appellant could be accommodated short of undue hardship, as required by the Act. The Commission remitted the matter back to the Board for determination under s. 47.

Staff Sergeant Kenneth Kyle: (Appellant & Respondent On Motion) and York Regional Police Service: (Respondent & Applicant On Motion)

Heard: November 26, 2002
Date of Decision: November 29, 2002

STAY OF PENALTY - One-year demotion imposed on Staff Sergeant - Appeal filed with respect to Hearing Officer's decision that Staff Sergeant's return to former rank not automatic after demotion - Application to lift stay of penalty pursuant to s. 25(1)(b) of Statutory Powers Procedure Act - Commission has authority to lift stay of penalty pending appeal - Appropriate in this case to exercise authority - Motion to lift stay granted.

STAY OF PENALTY - Application to lift stay of penalty - Factors to consider in exercise of authority to lift stay - Appropriate to consider potential merits of appeal and issue of prejudice - Appeal in question not prima facie frivolous or vexatious - No prejudice to Appellant in serving undisputed portion of agreed upon penalty - Motion granted.

The Respondent Service brought a motion pursuant to Rule 13.3(f) of the Commission's Rules of Practice.

As a result of an off-duty incident, Staff Sergeant Kyle was convicted of impaired driving and assault. He pled guilty to disciplinary charges of discreditable conduct. Both parties agreed to a one-year demotion to the rank of sergeant. However, Staff Sergeant Kyle argued before the Hearing Officer that he should be returned to his former rank at the end of the demotion; the prosecutor argued that he should remain at the lower rank until he was successful in a promotional process. On January 15, 2002 the Hearing Officer imposed the agreed-upon demotion and directed that Staff Sergeant Kyle's return to his former rank not be automatic. He would be permitted to enter any promotional process for staff sergeant without re-writing the qualifying exam. In his appeal to the Commission Staff Sergeant Kyle did not contest the demotion, but rather what happened after the demotion.

This decision concerned a motion brought by the Service, the Respondent to the Appeal and the Applicant in the instant matter, for an order by the Commission lifting the stay of penalty. Pursuant to s. 25(1) of the Statutory Powers Procedure Act (applicable to disciplinary proceedings per s. 69 of the Police Services Act), an appeal to the Commission has the effect of staying any penalty imposed upon an officer.

Motion granted.

The motion raised two questions: whether the Commission had the authority to lift a stay of penalty, and if so, whether it should exercise that authority. Section 25(1)(b) contemplated the lifting of a stay by a tribunal or court or "other appellate body". The Commission is an appellate body, thus having the authority to lift a stay. In assessing an application to lift a stay of penalty, it was appropriate to consider the potential merits of an appeal as well as issues of prejudice. In this case the appeal wasn't frivolous or vexatious on its face; indeed, it appeared to raise an important issue of statutory interpretation. However, there was no demonstrated prejudice to Staff Sergeant Kyle in implementation of the agreed-upon penalty of a one-year demotion, particularly where the appeal was scheduled to be heard in six weeks. Staff Sergeant Kyle could expect a decision on the appeal long before the end of his demotion. In these circumstances, the "integrity of the disciplinary process" was best served by proceeding with the penalty.

Bradley Christian (Applicant) and Constable Dean Grbich And Aylmer Police Service (Respondents)

Heard: July 17, 2001
Date of Decision: February 13, 2002

JURISDICTION - Discretion - Applicant sought leave to appeal penalty imposed with respect to one count of discreditable conduct against Cst. Grbich. The preliminary decision found Applicant qualified as complainant for purpose of appealing penalty with respect to only one of five counts of discreditable conduct - Preliminary decision also found Commission has no authority to hear appeals from disciplinary charges withdrawn at disciplinary hearing - Pursuant to s. 70(4) of Police Services Act Commission has broad discretion with respect to granting leave to appeal - Declaration of Principles in Act, novel issues raised by Applicant and fundamental fairness warrant exercise of discretion in favour of Applicant - Applicant granted leave to appeal one count of discreditable conduct.

LEAVE TO APPEAL - Complainants - Pursuant to s. 70(4) of Police Services Act Commission may hear a complainant's appeal from disciplinary decision if it considers it "appropriate" - Leave to Appeal not automatic entitlement - Broad discretion vested in Commission - Applicant raising novel issues concerning rights of citizens to participate in disciplinary process - Declaration of Principles in Act embodies recognition of interests of citizens in police services - As administrative tribunal Commission has obligation to exercise discretion to assure fairness - Applicant granted Leave to Appeal penalty imposed for one count of discreditable conduct.

In a preliminary decision dated October 18, 2001 the Commission found that Mr. Christian was a complainant within the meaning of Part V of the Police Services Act for the purpose of appealing the penalty imposed on Constable Dean Grbich for one count of discreditable conduct, relating to improper use of the C.P.I.C. system on May 21, 1998. The Commission found that Mr. Christian did not qualify as a complainant for the purpose of appealing penalties imposed on Constable Grbich for four other counts of discreditable conduct. Finally, the preliminary decision stated that the Commission has no authority to hear appeals from withdrawn disciplinary charges.

Having so found, the issue then became whether the Commission should grant Mr. Christian's application for Leave to Appeal. The authority to do so was found in s.70(4) of the Act, which provides the Commission "may" hear appeals from complainants other than appeals described in subsection (3) "if it considers it appropriate." Thus Leave toAppeal was not an automatic entitlement. The section appeared to vest in the Commission a broad discretion. As an administrative tribunal, the Commission had an obligation to exercise its discretion "to assure fairness in the system." There was no case law on the subject, but guidance could be derived from the Declaration of Principles in the Act, which gave recognition to the interests of citizens in police services.

Leave to Appeal granted with respect to penalty imposed upon Constable Grbich for one count of discreditable conduct.

The Applicant raised some novel issues having to do with the rights of citizens to participate in the disciplinary process. As well, the Applicant had identified concerns with his lack of involvement in the plea bargaining process and with an alleged conflict of interest. The Commission's obligation to be guided by fundamental fairness, the issues raised by the Applicant, which appeared to address the integrity of the public complaints system, and the Declaration of Principles all suggested that an exercise of discretion in favour of the Applicant was appropriate.

Bradley Christian (Appellant) and Constable Dean Grbich And Aylmer Police Service (Respondents)

Heard: May 6, 2002
Date of Decision: August 9, 2002

SENTENCING - Penalties - Appeal from penalty imposed on respondent officer with respect to conviction on one count of discreditable conduct - Constable Grbich misused C.P.I.C. system to retrieve information relating to Appellant - Appellant sought greater penalty - Five-day suspension imposed by Hearing Officer fair and reasonable penalty - Appeal dismissed.

SENTENCING - Penalties - Consistency - Five-day suspension imposed for conviction on one count of discreditable conduct - Penalty fair and appropriate considering seriousness of misconduct and range of penalties typically imposed in comparator cases - Appeal dismissed.

EVIDENCE - Admissibility - Application to receive new or additional evidence - Factors to consider when exercising discretion pursuant to s. 70(5) of Police Services Act - Proposed evidence neither relevant nor significant to issue of whether penalty imposed was appropriate - Motion denied - Appeal dismissed.

The Appellant, Bradley Christian, appealed the penalty imposed on Constable Dean Grbich, a five-day suspension, for conviction on one count of discreditable conduct, in relation to Constable Grbich's misuse of the C.P.I.C. system, on May 21, 1998.

This decision was preceded by two preliminary decisions in this matter. The first found that the Appellant qualified as a complainant for purpose of seeking Leave to Appeal with respect to only one of five counts of discreditable conduct for which Constable Grbich was convicted, being the count relating to the May 21, 1998 improper access. That first decision also found that the Commission had no authority to hear appeals from charges withdrawn at the hearing stage. The second decision examined the merits of the application, and granted Leave to Appeal the May 21st penalty. At the hearing of the appeal, the Appellant brought a preliminary motion to introduce new documentary evidence, arguing that the admission of such evidence would lead to the setting aside of Constable Grbich's guilty plea. The Appellant took the position that a five-day suspension was too lenient having regard to the seriousness of Constable Grbich's overall conduct, which involved both criminal conduct as well as an invasion of his, the Appellant's, privacy. The Respondents replied that the penalty was appropriate. Counsel for the Service also opposed the admission of the new evidence.

Preliminary motion dismissed. Appeal dismissed.

Pursuant to s. 70(5) of the Police Services Act, the Commission has discretion to admit new or additional evidence on appeal "as it considers just". While the Act was silent on what factors to consider in exercising that discretion, the Supreme Court of Canada's decision in Palmer identified the following principles: due diligence, relevance, credibility and significance. Here the proposed new evidence was neither relevant nor significant in terms of the issue to be decided by the Commission - viz. whether the penalty in question was appropriate. Moreover, the credibility of the evidence was suspect because it had not been tested by cross-examination. Finally, the Commission had no power to overturn a conviction and direct new charges on a sentence appeal. On the merits of the appeal, the Commission found the penalty was fair and appropriate. Referring to its circumscribed authority to vary penalties, the Commission noted at p. 9: "Mere disagreement is not enough." The Hearing Officer's choice of a five-day suspension in this case reflected the seriousness of Constable Grbich's misconduct and the need for both specific and general deterrence.

Sergeant David Holder (Appellant) and Ontario Provincial Police (Respondent)

Heard: December 4, 2001
Date of Decision: May 31, 2002

JURISDICTION - Statutory constraints - Appellant alleged constructive dismissal - Appellant claimed resignation coerced and procured under threat of criminal prosecution - No "decision" from which to appeal because Appellant reached agreement with Crown Attorney that criminal charges against him would be dropped if he resigned - Commission cannot take jurisdiction under s. 70 of *Police Services Act* in absence of disciplinary "decision" - Appeal dismissed.

TIME-LIMITS - Appellant resigned after reaching agreement with Crown Attorney - Appellant alleged constructive dismissal - Thirty-day time-limit for filing notice of appeal under s. 70(1) of *Police Services Act* ran from either date letter of resignation accepted or date Appellant ceased to be police officer - Statutory time-limit exceeded in either event - No decision rendered from which to appeal - Commission lacking jurisdiction - Appeal dismissed.

PROCEDURAL ISSUES - Standing - Appellant alleged resignation coerced - "Decision" necessary to trigger statutory time-limit never took place - Alternatively time-limit for filing appeal exceeded in relation to alleged "dismissal" - At time of filing notice, Appellant no longer police officer - Appeal dismissed.

RESIGNATION - Appellant reached agreement with Crown Attorney that criminal charges against him would be dropped in exchange for his resignation - Appellant alleged resignation not voluntary - Evidence that decision to resign undertaken by Appellant of his own free will - Appellant accepted financial package and began collecting pension - Issue or "essential character" of dispute involving agreement to avoid criminal prosecution, not disciplinary matter - Commission lacking jurisdiction - Appeal dismissed.

As a result of an incident, dating back to 1997, of apparent domestic violence involving Sergeant Holder's son and daughter-in-law, Sergeant Holder was facing disciplinary and criminal charges (discreditable conduct and obstructing justice, respectively). No disciplinary hearing ever took place, because the Crown Attorney reached an agreement with the Appellant in September 1999, whereby the charges against Sergeant Holder would be dropped if he agreed to resign. The O.P.P. received the letter of resignation in October 1999, and the Appellant retired effective December 31, 1999. On March 20, 2000 the Appellant launched an appeal pursuant to s. 70 of the *Police Services Act*.

Sergeant Holder claimed that his resignation was involuntary, having been procured under the threat of criminal prosecution. His counsel urged the Commission to take jurisdiction on the basis of constructive dismissal. Counsel for the Respondent argued the Commission had no jurisdiction for several reasons: there was no "decision" rendered in this case; the statutory time-limits were exceeded; and the Appellant was no longer a police officer when the appeal was filed.

Appeal dismissed.

The Commission lacked jurisdiction. Before the Commission could take jurisdiction, a disciplinary "decision" must have been rendered under s. 64(7) or s. 65(9). The decision in this case was Sergeant Holder's decision to retire/resign, pursuant to an agreement he made with the Crown Attorney - not the O.P.P. – in order to avoid criminal prosecution. There was no evidence that the decision, made by a 30-year veteran of the force who had the benefit of legal advice, was involuntary. The Commission had no discretion to extend that time limit. Moreover, the Appellant had ceased to be a police officer before his appeal was filed.

Constable Norman Groot (Appellant) and Peel Regional Police Service (Respondent)

Heard: February 12, 2002
Date of Decision: April 5, 2002

DISCREDITABLE CONDUCT - Criminal offences - Assault - Appeal from penalty of dismissal - Appellant convicted of assaulting prisoner in custody - Hearing Officer's assessment that conviction would affect Appellant's usefulness to service not error in principle - Hearing Officer found recent accomplishments and good character endorsements insufficient to outweigh seriousness of offence and impact on reputation of service - Conclusion not patently unreasonable - Appeal dismissed.

SENTENCING - Principles - Penalty of dismissal imposed for finding of discreditable conduct - Appellant convicted of assaulting prisoner in custody - Not Commission's role to substitute its own opinion for that of Hearing Officer - Hearing Officer's assessment that non-service related evidence of rehabilitation was insufficient to warrant penalty other than dismissal not incorrect in principle - Appeal dismissed.

Constable Groot appealed the penalty of dismissal imposed for a finding of discreditable conduct contrary to s. 2(1)(a)(ix) of the Code of Conduct. The incident that gave rise to the charge took place on December 15, 1990. Constable Groot arrested an intoxicated man in the service's parking lot and took him to an interview room, whereupon the prisoner struck his head on the desk with such force that serious injuries ensued. Two trials followed. After the second trial, in September 1998 the Ontario Court of Appeal found him guilty of common assault. In the meantime, disciplinary proceedings were initiated. In February 2000 Constable Groot was sentenced to time served with 18 months probation. During the ten-year period from the time of the incident to his sentencing, Constable Groot completed two degrees, including a law degree. Post sentencing, he was admitted to the bar.

Throughout the criminal and disciplinary proceedings Constable Groot maintained his original assertion, that the prisoner had fallen and hit his head. Counsel for the Appellant argued that the Appellant's failure to admit responsibility was improperly weighed against him by the Hearing Officer. He also alleged a number of other errors on the part of the Hearing Officer, such as an underrating of the Appellant's positive changes and achievements, and the conclusion that dismissal was the only possible penalty for an officer convicted of a criminal offence. Counsel for the Respondent countered that the penalty was appropriate and was chosen after due consideration of all relevant factors.

Appeal dismissed

The Hearing Officer's expression of concern that the Appellant clung to his perception of an accident was not a clear indication that she treated his failure to plead guilty as an aggravating factor. The Hearing Officer doubted that the Appellant would be able to perform his duties as a police officer because his conviction would impair his credibility as a witness in criminal trials. In other words, his usefulness to the service was in question. While she found that factor outweighed his positive achievements since the incident, that finding was not patently unreasonable and did not amount to an error in principle. It was not the role of the Commission to substitute its own opinion for that of the Hearing Officer, in the absence of manifest errors.

Constable A.L. Favretto (Appellant) and Ontario Provincial Police (Respondent)

Heard: September 11 and 20, 2001
Date of Decision: February 13, 2002

DISCREDITABLE CONDUCT - Disorderly or prejudicial conduct - Appellant drew service revolver and pointed it at fellow officer with his finger on trigger - Criminal charge against Appellant dismissed - Trial judge found Appellant was in state of non-insane automatism - Hearing Officer found Appellant guilty of discreditable conduct contrary to s. 2(1)(a)(xi) of O.Reg. 123/98 and imposed penalty of dismissal if Appellant failed to resign within 7 days - Appellant's conduct clearly discreditable - Appeal with respect to conviction dismissed - Decision with respect to penalty flawed in that Hearing Officer failed to give factors of provocation and rehabilitative potential proper weight - Two-year reduction in rank to third class constable substituted for penalty of dismissal - Conditional return to work - Appeal with respect to penalty allowed.

DISCREDITABLE CONDUCT - Intent - Relevance with respect to discreditable conduct offences - *Mens rea* necessary element in criminal proceedings - Disciplinary proceedings under Police Services Act distinguished from criminal trial - Different burden of proof - Intent not necessarily essential ingredient especially where, as here, words "willfully" or "knowingly" absent from provisions of Code - Appellant pointed loaded service revolver at fellow officer - Even if Hearing Officer had accepted medical theory that Appellant was in state of non-insane automatism, theory would merely provide explanation rather than excuse - Appellant's conduct clearly discreditable.

SENTENCING - Mitigating factors - Provocation - Appeal against finding of discreditable conduct and penalty of dismissal - Appellant pointed loaded service revolver at fellow officer - Prerogative of Hearing Officer to reject defence of non-insane automatism - However Hearing Officer failed to give proper weight to provocation factor - Incident followed lengthy history of harassment to which Appellant subjected by fellow officers - Momentary aberration in otherwise positive record - Penalty varied.

SENTENCING - Rehabilitation - Appellant pointed loaded service weapon at fellow officer - Conviction on count of discreditable conduct upheld - Penalty of dismissal not warranted - Hearing Officer failed to give provocation factor proper weight and gave no consideration to rehabilitation since he believed Appellant's conduct too serious - Isolated incident - Medical opinions that Appellant could return to police duties - Remorse evident - Variation in penalty appropriate given extraordinary mitigating factors - Conditional reinstatement with two-year reduction in rank.

The Appellant was convicted of one count of discreditable conduct. He appealed both the conviction and the penalty imposed, resign within seven days or be dismissed.

One of the Appellant's fellow officers, while inviting him to go for coffee, took out his baton and waved it around the Appellant's head. The Appellant drew his service revolver and pointed it at the fellow officer, with his finger on the trigger. The Appellant was charged with pointing a firearm contrary to s. 86(1) of the Criminal Code. The trial judge dismissed the charge, accepting expert medical testimony that the Appellant was in a state of non-insane automatism at the time of the incident. However, the Hearing Officer rejected that defence, preferring other medical evidence that an emotional display such as the Appellant showed immediately following the incident, was inconsistent with a state of dissociation. The Hearing Officer considered a number of factors in reaching his decision, but felt that the seriousness of the Appellant's conduct outweighed factors such as his lengthy, unblemished service record.

Counsel for the Appellant argued that the Hearing Officer erred in his approach to the evidence. Counsel sought a dismissal of the charge, or in the alternative, a reduction in

penalty. The Respondent argued that the conviction was supported by a firm evidentiary foundation, and the penalty was appropriate.

Appeal against conviction dismissed. Appeal against penalty allowed.

The grounds for interference with a Hearing Officer's findings of fact and credibility were relatively narrow. In this case, the Hearing Officer had rejected the defence of non-insane automatism, which was his prerogative. His decision was not void of evidentiary foundation. But even if he had accepted that medical opinion, the theory was merely explanatory, rather than exculpatory. In contrast to criminal proceedings, intent was not necessarily an essential component to a finding of guilt with respect to disciplinary proceedings, particularly where the provisions of the Code made no reference to "knowingly" or "willfully". The Appellant's conduct was clearly discreditable.

However, the Hearing Officer's decision was flawed in that he failed to assign proper weight to the factors of provocation and rehabilitation. The gun-drawing incident was preceded by a long history of harassment of the Appellant by his fellow officers. Dismissal was reserved for cases where rehabilitative prospects were nil or the employment relationship was not restorable. That wasn't the situation here, where a lengthy positive employment record, expressions of sincere remorse, character references and medical testimony all suggested that the Appellant had the potential to be rehabilitated. The panel varied the penalty from dismissal to a two-year reduction in rank from first to third class constable, with a conditional return to work.

Constable Robert Precious (Appellant) and Hamilton Police Service (Respondent)

Heard: November 6, 2001
Date of Decision: May 10, 2002

INSUBORDINATION - Disobedience of orders - Appellant refused to provide statement as directed - Questions posed were for purpose of considering disciplinary charges - Lawful order - s. 7 of Charter not providing lawful excuse for disobeying order - Conviction for insubordination upheld - Conviction on charges of deceit set aside - Penalty varied from 12-month demotion to forfeiture of 24 hours' pay - Appeal allowed in part.

CHARTER - Conviction for insubordination - Order to answer questions not violating Appellant's rights under s. 7 of Charter.

DECEIT - False statements - Appellant convicted on two counts of deceit - Alleged false statements in notebook and false testimony at trial - Reasons of Hearing Officer seriously deficient - Evidentiary foundation necessary to sustain conviction not established - Convictions set aside - Conviction for insubordination upheld - Penalty varied.

Constable Precious, a 24-year veteran of the Hamilton force with an unblemished record, appealed his conviction on one charge of insubordination and two charges of deceit. He appealed the penalty imposed by the Hearing Officer on March 7, 2001: a 12-month reduction in rank from first-class to second-class constable, plus a requirement to take refresher training.

These charges arose from the Appellant's investigation of a domestic dispute on February 18, 1998 and the subsequent trial of "Mr. F." on charges of assault. Specifically, the Appellant was alleged to have omitted critical information from his notes and to have given false testimony, in that he made no mention of "Ms. R." having "come at" Mr. F. with a dart and in that he denied being told by Ms. R that she had stabbed Mr. F with a dart. Mr. F was acquitted. Criminal charges of perjury were then laid against the Appellant. He too was acquitted. After Mr. F.'s trial Constable Precious was directed to answer a series of questions posed by a Sergeant of the force who was investigating the Appellant's conduct during these events. On the advice of counsel, the Appellant refused to answer the questions until the criminal charges against him had been dealt with. Constable Precious was acquitted of the perjury charges in March 2000; however he only supplied his answers to the questions in September 2000.

Counsel for the Appellant argued that the Hearing Officer erred: in convicting the Appellant of insubordination, because the order to answer questions violated his Charter rights; in convicting him of deceit with respect to his notebook and occurrence report as well as his testimony in court; and in imposing a penalty without reference to past cases of similar misconduct.

Conviction for insubordination upheld; conviction on charges of deceit set aside. Penalty varied from 12-month demotion to forfeiture of 24 hours' pay. Appeal allowed in part.

The Hearing Officer failed to deal with the Charter issue, particularly whether the Charter provided a lawful excuse for disobeying the order to answer questions. The Commission found the Appellant could not rely on s. 7 of the Charter. In this case, the questions were clearly for the purpose of disciplinary investigation, as distinguished from a criminal proceeding with potential penal consequences and the risk of deprivation of liberty.

Alternatively, the Appellant waited several months after his acquittal before complying with the order. Thus the conviction for insubordination stood.

As for the deceit charges, the Commission found serious deficiencies in the Hearing Officer's reasons: no analysis of the facts against issues of intent (in the case of wilful disobedience) or issues of performance (in the case of negligently false statements). Instead, the record disclosed some sort of digression concerning "inconvenience" to Ms. R. Further, the Hearing Officer blamed Constable Precious for Ms. R. being "re-victimized by the judicial system." The deficiencies in the Hearing Officer's reasons meant that the proper evidentiary foundation to support a conviction on the charges of deceit had not been made out. Consequently, those convictions were set aside.

In imposing penalty, the Hearing Officer failed to consider comparators, although he did consider the usual principles of sentencing. Since two of the three charges had been set aside, the question was what was an appropriate penalty for a single, albeit serious offence of insubordination? In the Orr case, a recent and relevant comparator, the penalty was 24 hours' loss of pay. The Commission imposed the same penalty in this case.

Constable Claude Armstrong (Appellant) and Peel Regional Police Service (Respondent)

Heard: April 4, 2002
Date of Decision: July 18, 2002

DISCREDITABLE CONDUCT - Sexual harassment - Appellant convicted of discreditable conduct - Appellant maintained inappropriate relationship with 16 year old girl - No unfairness or denial of natural justice in hearing process - No basis for overturning decision as to conviction - Penalty of dismissal reasonable - Appeal dismissed.

SENTENCING - Principles - Errors in principle - Appellant convicted of discreditable conduct in having inappropriate sexual relationship with 16 year old girl - Not demonstrated that Hearing Officer treated Appellant's assertion of innocence as aggravating factor - Any deficiencies in Hearing Officer's analysis of issue not such as to constitute manifest error in principle sufficient to warrant overturning penalty of dismissal - Appeal dismissed.

On September 19, 2001 the Appellant was convicted of one count of discreditable conduct, contrary to s. 2(1)(a)(xi) of the Code of Conduct. He appealed both the conviction and the penalty, dismissal failing resignation within 7 days.

The discreditable conduct related to the Appellant's instigation and maintenance of an "inappropriate relationship" with the 16 year old daughter, "P", of a neighbour. Constable Armstrong's harassment of P was said to include sexual intercourse on one occasion in 1998, as well as phone calls, and episodes of "kissing and hugging", the latter being admitted by Constable Armstrong, who nevertheless strongly denied P's version of events, insisting that she in fact harassed him and complained only when he rejected her.

When P told a school guidance counsellor that she was being "bothered" by the Appellant, the teacher called Constable Armstrong and warned him to stop. Apparently Constable Armstrong didn't specifically deny the allegations, but merely thanked the teacher for her warning. In September 2000, the Vice-Principal of P's school reported the matter to the force's Internal Affairs Bureau. Both P and the Appellant gave videotaped interviews. In December 2000 the Crown decided not to bring criminal charges.

Disciplinary proceedings were commenced in January 2001. The notice of hearing alleged that the Appellant maintained an "inappropriate relationship" with P, who had lodged a complaint of sexual assaults and harassment.

At the disciplinary hearing the Appellant chose to be represented by agent, rather than by legal counsel. At the appeal hearing, counsel for Constable Armstrong argued that this factor, among others, translated into a denial of fairness, since an experienced former Crown Attorney represented the police service. Counsel for the Appellant also argued that the statement of particulars was vague and prejudicial, the Hearing Officer's conclusions were unsupported by the evidence, that his assessment of credibility and application of the standard of proof were erroneous, and that he committed an error in principle by treating Constable Armstrong's failure to plead guilty as an aggravating factor. Based on these alleged flaws, he sought an overturning of either the conviction or the penalty. Counsel for the Respondent submitted that there was no evidence that the Appellant was materially disadvantaged in his representation at the disciplinary hearing. He maintained that the process was fair and the disposition was reasonable.

Appeal dismissed.

There was no basis for overturning either conviction or penalty. There was no obvious unfairness or denial of natural justice in the hearing process. The Appellant received disclosure before the hearing and didn't challenge the notice or statement of particulars. He understood the allegations against him and the case he had to meet. At the hearing he was represented by agent as a matter of choice. To overturn the result on the basis of the performance of his representative, the Appellant would have to demonstrate 1) incompetence, 2) resulting in a miscarriage of justice, and 3) that a different result might have obtained had his representative performed adequately.

There were no manifest errors in the substance of the Hearing Officer's decision. His assessment of credibility and his conclusion - that Constable Armstrong took advantage of P's apparent infatuation with him - were not void of evidentiary foundation. On the issue of penalty, the conduct was serious, the fact that it was off-duty was not a mitigating factor, and the conduct was obviously injurious to the reputation of the force. The fact that the Hearing Officer's explanation or analysis of the Appellant's assertion - that *he* was in fact the victim - was somewhat difficult to understand, didn't translate into an error in principle, sufficient to warrant overturning the penalty. Rather, the analysis seemed to be directed towards the rehabilitative potential of the Appellant, an entirely appropriate factor in sentencing. The Hearing Officer chose the penalty of dismissal after reviewing this and other relevant factors, including the Appellant's "extensive" disciplinary record. The penalty was both reasonable and consistent with the result in a comparable case.

Appeals and Judicial Reviews of Commission Decisions

Date Heard	Name of Police Officer and Service	Outcome of Judicial Review
1999	Constable Scot Besco and Peel Regional Police	Appeal Dismissed Feb. 20/02
Feb. 2002	Canadian Civil Liberties Association & Aspinal, Dorter, Gorbould & Potvin and Guelph Police Service	Appeal Upheld October 2002
March 1999	Constable David Devinney, Toronto	Appeal abandoned
2001	Constable Aaron Groat	Dismissed

Section 40 Hearings

The Police Services Act mandates the Commission to ensure that no municipal force is abolished unless arrangements have been made to meet the policing needs of the community. Any new arrangement must provide the infrastructure, (i.e. staff, equipment and facilities) to ensure adequate and effective police services. To this end the Commission reviews proposals accepted by Councils and considers all public comments and submissions.

Section 40 of the *Police Services Act* allows police services boards to terminate the employment of a member of a police force for the purpose of abolishing the force if the Commission consents and if the abolition does not contravene the Act.

The nature of this legislative process is to ensure that no municipal police force is abolished unless arrangements are in place, which will satisfactorily meet the policing needs of the community in question. Any new arrangement must provide for the appropriate staff, equipment and facilities to ensure adequate and effective policing. In addition, no member of a municipal police force is to be terminated without steps being taken to allow for proper severance. When a municipality requests the approval of the Commission for the disbandment of their police service, they must supply the Commission with a copy of a resolution passed by municipal council. The Commission requests a copy of the proposal for the provision of alternative policing services and also ascertains whether severance arrangements have been made with those members whose employment would be terminated if the proposal is accepted.

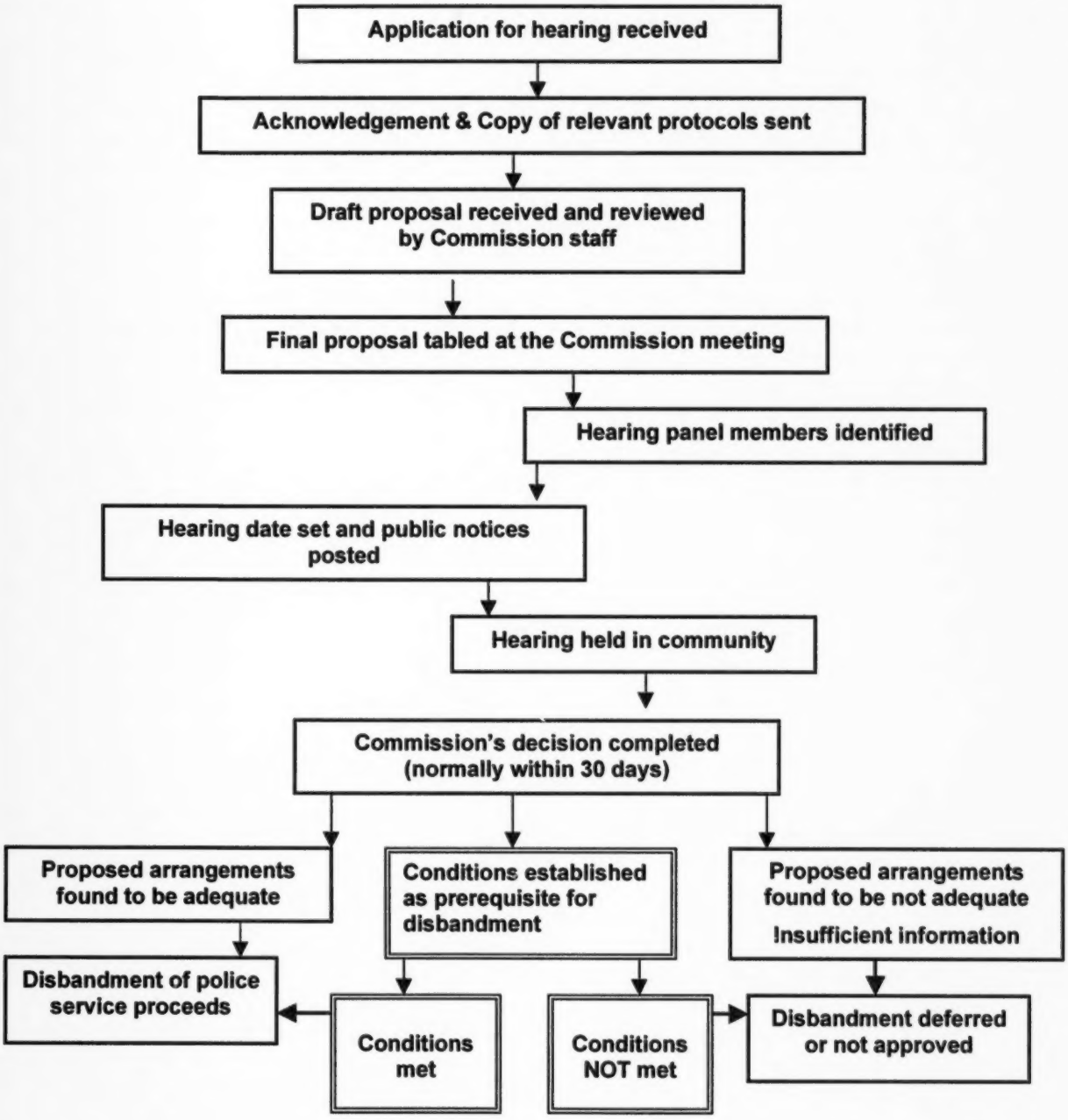
There are two fundamental issues to be dealt with. First, does the proposed new arrangement appear to provide adequate and effective police services that meet the needs of the community? In this respect, the Commission receives and reviews the proposal that has been accepted by the town council and the police services board and consider any public comment and submissions.

If any member is to be terminated as a consequence of the abolition, the question then becomes whether or not the parties have reached an agreement with respect to severance or have consented to having any outstanding matters referred to arbitration. If so, the Commission is satisfied and our involvement in this issue would be at an end. However, if no agreement has been reached, the Commission may order the parties to arbitration on the outstanding issues.

It is not the Commission's function to judge whether or not what is being proposed is economical or superior to what may already be in place or any other alternative. The Commission's focus is to determine whether the proposed arrangements meet the requirements of the Act. It is not the function of the Commission to determine what constitutes appropriate severance arrangements. That is a matter for bargaining between the parties, and, in the absence of agreement, for arbitration.

Police Service Restructuring Hearings (Section 40)

The process is generally the same for disbandment, reduction and amalgamation hearings.


Application for hearing received
Acknowledgement & Copy of relevant protocols sent
Draft proposal received and reviewed by Commission staff
Final proposal tabled at the Commission meeting
Hearing panel members identified
Hearing date set and public notices posted
Hearing held in community
Commission's decision completed (normally within 30 days)
Proposed arrangements found to be adequate
Conditions established as prerequisite for disbandment
Proposed arrangements found to be not adequate
Insufficient information
Disbandment of police service proceeds
Conditions met
Conditions NOT met
Disbandment deferred or not approved

There were four hearings into requests for disbandment of a municipal police service in 2002. They were Town of Carleton Place, Meaford Thornbury Police Service, Ingersoll Police Service and Wingham Police Service. The complete text of these decisions can be found on the Commission's web site – www.occps.ca.

Town of Carleton Place Police Service

Hearing date: July 16, 2002
Decision Date: December 20, 2002

In December 2001, the Carleton Place Council notified the Solicitor General that due to severe shortages of uniform officers, the service was unable to provide adequate and effective police service to their community. The service had four uniform officers on sick leave (two long-term, two short-term due to injury and disability). As a result, two officers were seconded from the OPP to the Carleton Place Police Service.

It was the panel's conclusion that the proposal, for the most part, was reasonable and workable. Five conditions had to be met before the final disbandment could proceed.

Meaford Thornbury Police Service

Hearing date: October 23 and 24, 2001
Decision Date: January 17, 2002

The hearing was held in response to an application by the Town of The Blue Mountains and the Municipality of Meaford pursuant to section 40 of the Police Services Act for consent to the abolition of the Meaford Thornbury Police Service.

This is for the purposes of having policing in Blue Mountains provided in an integrated arrangement with the Collingwood Detachment of the Ontario Provincial Police (the "OPP") and in Meaford in an integrated arrangement with the Grey County Detachment of the OPP.

Both Towns had undergone municipal restructuring. On January 1, 1998, the Town of Thornbury was joined with the Township of Collingwood to become the new Town of The Blue Mountains. On January 1, 2001, the Town of Meaford was joined with the Townships of St. Vincent and Sydenham to become the new Municipality of Meaford. This created a unique situation. The new Town of The Blue Mountains ended up with two police providers. The OPP policed the former Township of Collingwood and the Service the former Town of Thornbury. The new Municipality of Meaford also ended up with two police providers. The OPP policed the former Townships of St. Vincent and Sydenham and the Service the former Town of Meaford. Leaving aside question of the efficiency, it became apparent that this arrangement did not meet the requirements of section 5 of the Act.

Subject to a suggestion that workload be monitored for the new service, the Commission panel was satisfied that the proposed staffing arrangement should

permit adequate and effective policing in the Town of Blue Mountains. Further, in contrast to Blue Mountains the workload in Meaford was lower. The Commission consented to the abolition of the Meaford Thornbury Police Service subject to 6 conditions relating to renovations, the communications/ dispatch centre, timeline for notices to officers about employment and arbitration.

Wingham Police Service

Decision Date: April 5, 2002
Panel Member: Murray W. Chitra, Kelly Culin, Orlando Zamprogna

An application was received from the Township of North Huron and the North Huron Police Services Board for consent to the abolition of the Wingham Police Service for the purpose of having future policing in the Township provided under contract by the Ontario Provincial Police in an integrated arrangement with Huron County.

On January 1, 2001, the former municipalities of the Town of Wingham, Village of Blyth and the Township of East Wawanosh were amalgamated to form the new municipality of the Township of North Huron. New Township Council had a series of discussions with the North Huron Police Services Board. As a result, on June 18, 2001, Council passed a resolution agreeing in principle to enter into a five-year contract with the OPP for policing. Council authorized "representatives from the OPP, Police Services Board and Council [to] prepare a submission to OCCOPS for disbandment of the Wingham Police Service".

This submission was adopted by Council on November 19, 2001 and received by the Commission on November 21, 2001. It called for the disbandment of the Wingham Police Service and the integration of policing in North Huron with other OPP resources in Huron County into a unified arrangement. The public meeting was scheduled for February 5, 2002. As well, arrangements were made for panel members to inspect the OPP Detachment building in Wingham prior to the meeting.

On January 24, the Commission requested that it be provided with the number of municipal officers currently in Wingham and the County of Huron excluding East Wawanosh and the Village of Blyth and the number of proposed municipal officers for Huron County.

At the meeting on February 5th, the requested information concerning municipal policing resources was not provided. Accordingly, at the meeting, the panel repeated their request. On March 5, 2002, correspondence was received from Superintendent Susan Laverty, Commander, Contract Policing Division of the OPP, answering these questions in part. On March 7, 2002, further clarification and documentation relating to the identified number of proposed municipal officers for the integrated County was requested. On March 25, 2002 Superintendent Laverty advised that, "After consideration, the position of the Ontario Provincial Police is that the additional documents requested would not provide material relevant to the deliberations of the Commission in the matter of the disbandment of

the Wingham Police Service". Commission requests for further details were refused.

Such information has been made available for previous disbandment proceedings and is necessary for a proper assessment of whether the proposed integrated policing arrangements will meet the requirements of the Act. Failing that information, the Commission did not consent to the termination of members of the Wingham Police Service for the purpose of abolishing that force.

Ingersoll Police Service

Hearing date: June 27, 2002
Decision Date: August 27, 2002

An application was received from the Town of Ingersoll for consent to abolish the Ingersoll Police Service for the purpose of having all policing in the Town provided by the Ontario Provincial Police.

On January 11, 2001 Town Council passed a resolution requesting that proposals for alternative methods of policing be sought. An ad hoc committee consisting of members of Council, the Ingersoll Police Services Board and local police associations was established. It was supported by the Chief of Police, Town Chief Administrative Officer and a consultant.

Following the Ministry of Public Safety and Security guidebook entitled "Restructuring Police Services in Ontario" the committee defined required levels of service and prepared a Request for Proposals. The Request was approved by both Town Council and the Board and released with a closing date of September 28, 2001. Proposals were received from the Service and OPP. The two proposals were reviewed by Council and the Board at a joint meeting on December 3, 2001. A public meeting was held by the Board on January 7, 2002.

Following further public presentations on January 14, 2002 Town Council passed a resolution accepting the OPP proposal. A public meeting was convened to examine the proposal on June 27, 2002. Eight presentations were received.

In 2001 the two services collectively employed 64 officers to perform municipal policing functions in four communities with a total population of 40,175. This represented an overall total municipal officer to citizen ratio of 1:628. It was proposed to integrate these resources into a new structure combining the resources of the two services.

The Commission approved the disbandment subject to seven conditions relating to completion of building renovations, deployment of staff complement, officers of employment and severance issues.

PUBLIC COMPLAINTS

Part V of the Police Services Act mandates the Commission as the review body for public complaint decisions made by Chiefs of Police and the Commissioner of the Ontario Provincial Police. The Commission has broad powers that include the right to call a public inquiry as well as make recommendations regarding the nature and delivery of police services to their respective communities.

Complaints may be made about the conduct of a police officer (including the chief of police or Commissioner), the policies of a police service or the services provided by a police service. Only the individual directly affected can lodge a complaint. The complaint must be in writing.

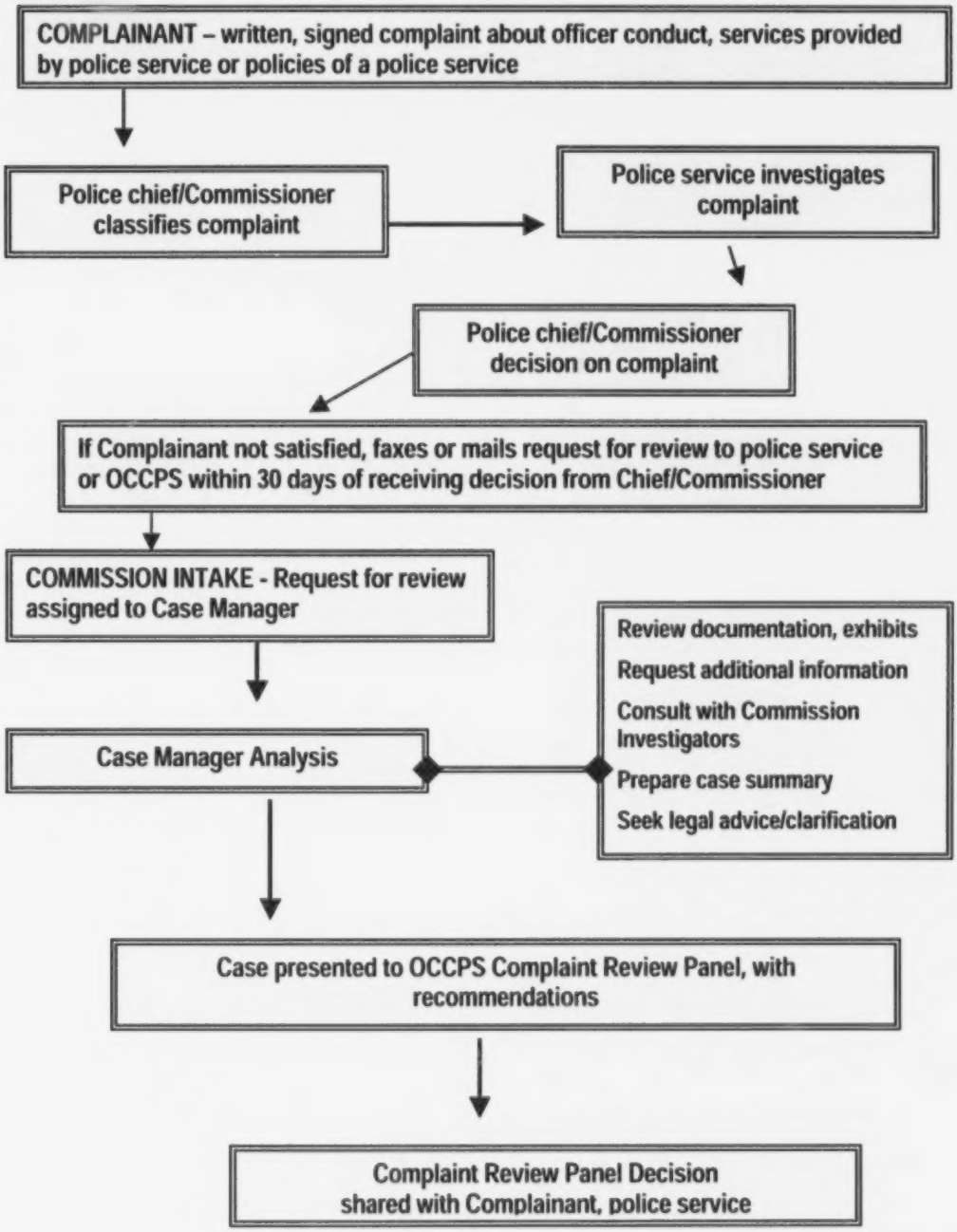
If the individual involved is not satisfied with the decision by the Chief or Commissioner following investigation of the original complaint, they have 30 days within which to ask for a review. To conduct the review, the Commission requests information from the complainant as well as the investigation file from the involved police service. Case Managers analyze each file and prepare a case summary that is presented to a Complaints Review Panel composed of Commission members.

On review, the Commission may confirm the decision of the Chief or the Commissioner, change the decision, return the file to the involved police service or another police service for further investigation.

In 2002, there were 2,829 public complaints made against sworn police officers or their police services in Ontario. This is an increase of 24 over last year. During 2002, the Commission received 466 requests for review. This represents 16.5% of complaints being reviewed externally, a decrease from 17.5% in 2001.

An outline of the complaints review process, s statistical summary of complaint activity from 1998 to 2002 and several complaint review case summaries are outlined on the following pages.

Steps in the Public Complaints Process


COMPLAINANT – written, signed complaint about officer conduct, services provided by police service or policies of a police service
Police chief/Commissioner classifies complaint
Police service investigates complaint
Police chief/Commissioner decision on complaint
If Complainant not satisfied, faxes or mails request for review to police service or OCCPS within 30 days of receiving decision from Chief/Commissioner
COMMISSION INTAKE - Request for review assigned to Case Manager
Case Manager Analysis
Review documentation, exhibits
Request additional information
Consult with Commission Investigators
Prepare case summary
Seek legal advice/clarification
Case presented to OCCPS Complaint Review Panel, with recommendations
Complaint Review Panel Decision shared with Complainant, police service

Public Complaints Statistics

PUBLIC COMPLAINTS AGAINST POLICE OFFICERS IN ONTARIO
1998 – 2002

1998	2,538
1999	2,665
2000	2,753
2001	2,805
2002	2,829

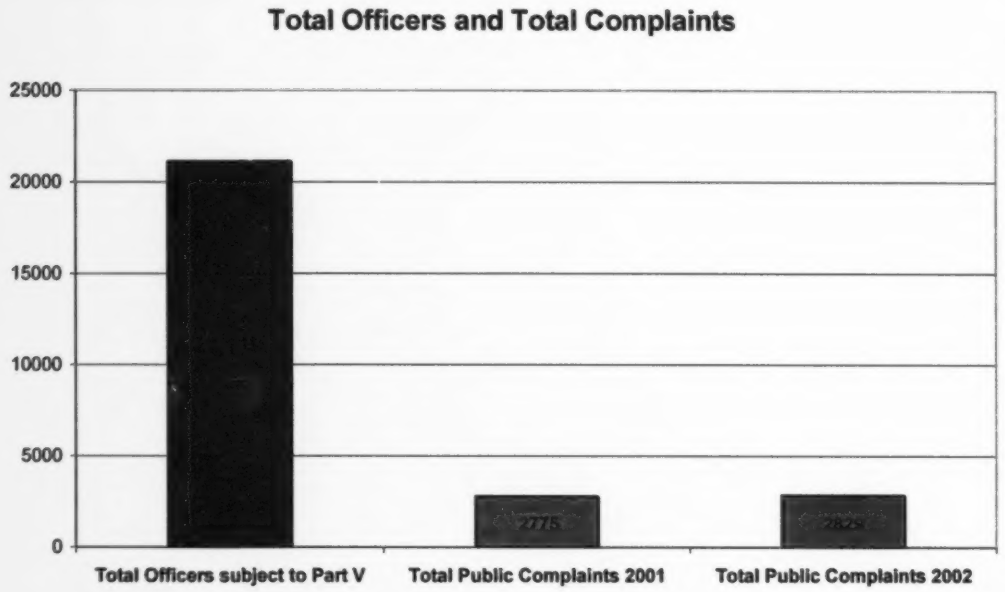
+Source: Police Service Board Reports

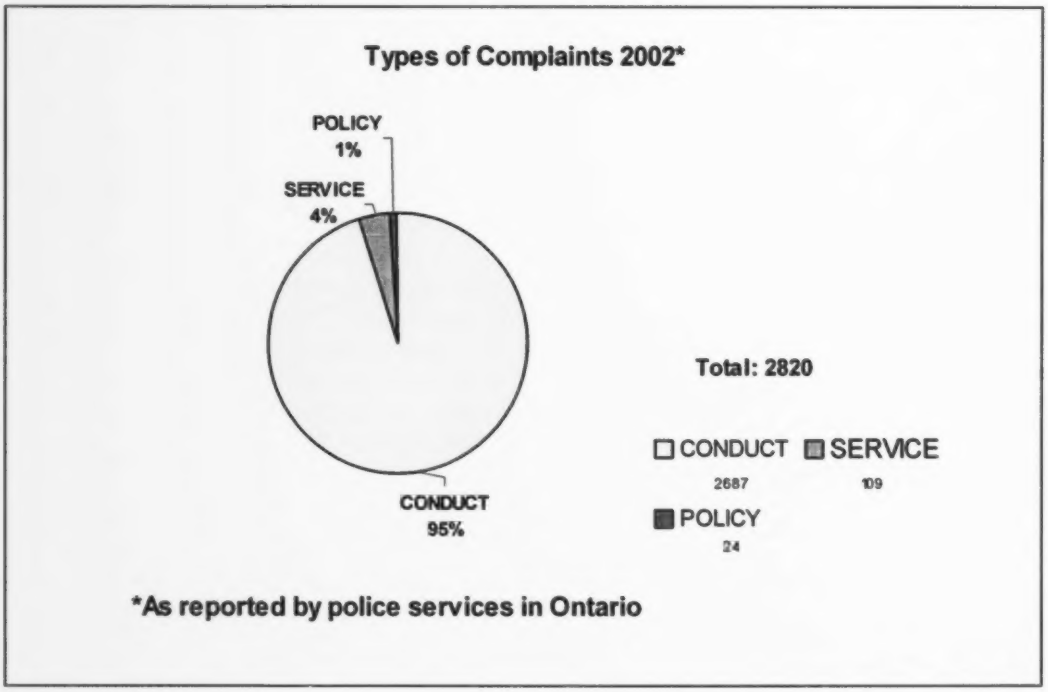
REVIEWS REQUESTED BY COMPLAINANTS
1998 – 2002

1998	472
1999	420
2000	445
2001	491
2002	466

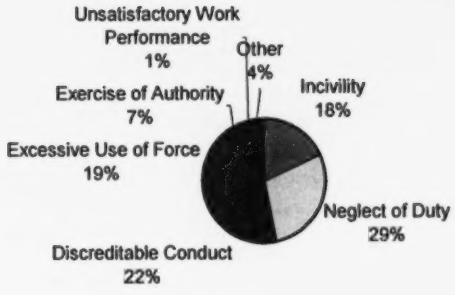
+Source: Ontario Civilian Commission on Police Services

Public Complaints Activity - 2002



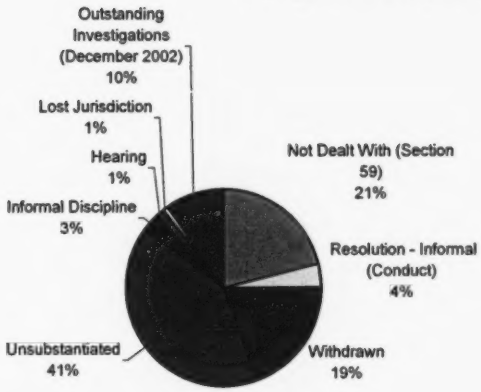


Complaint Allegations 2002



- Incivility
- Neglect of Duty
- Discreditable Conduct
- Excessive Use of Force
- Exercise of Authority
- Unsatisfactory Work Performance
- Other

Complaint Dispositions 2002



- Not Dealt With (Section 59) (665)
- Resolution - Informal (Conduct) (120)
- Withdrawn (610)
- Unsubstantiated (1269)
- Informal Discipline (103)
- Hearing (36)
- Lost Jurisdiction (31)
- Outstanding Investigations (December 2002) (304)

Total: 3138*

***Includes carry-over from last year**

Allegation: Intimidation and Threatening

The complainant is a father in the midst of a divorce and custody battle. He indicates that a police officer is currently involved with his soon to be ex-wife.

It is alleged that the officer left a voice message for the complainant stating that he was calling on behalf of the Children's Aid Society (CAS) and requested a call back at a specified telephone number (an audiocassette tape was provided by the complainant as proof). When the call was returned, the officer allegedly threatened that he would contact the CAS and report, among other things, that the complainant was failing to provide the necessities of life (referring to giving his estranged wife some of his son's things, like his bedroom furniture). It is also alleged that the officer uttered two other similar threats. The complainant fears what the officer might do to jeopardize his relationship with, and access to, his son. He also feared for his safety. In adjudicating the matter the police service deemed the complaint frivolous, vexatious or made in bad faith.

Disposition: The Commission did not agree that the complaint was frivolous, vexatious or made in bad faith and returned the matter to the police service for further investigation.

Allegation: Exposing Complainant to Second Hand Smoke

The complainant was arrested for Mischief and detained in the rear of a police cruiser while the officer prepared documentation to release him on an Undertaking. In addition to a number of other allegations, it was alleged that the officer smoked a cigarette while the complainant was sitting in the rear of the police cruiser. The allegation was not addressed in the Chief's decision letter, but in a statement provided by the officer, he acknowledged that he smokes and that while he does not recall smoking with the complainant present, he very well may have.

Disposition: This was of concern to the Commission. It was addressed by communicating in writing to the Chief of Police. While no misconduct was found against the officer, the Commission takes the position that it is inappropriate for a member of the service to smoke in a police vehicle which is considered a workplace and that out of due consideration, all police officers on duty should refrain from exposing those in their care and control to second-hand smoke.

Allegation: Failure to Notify Complainant of Withdrawn Charge

The complainant was arrested for Mischief In relation to a domestic situation and was released on an Undertaking. The Crown determined that there was no reasonable prospect of conviction and the involved police officer understood that it was his responsibility to notify the accused and the victim. The victim was notified at some point but due to a serious fall (where the officer momentarily lost consciousness, fractured a vertebrae in his neck and suffered short term memory loss) the complainant was not notified that the charges were withdrawn. The Chief of police identified this failure as an issue of neglect of duty that required the imposition of appropriate preventative measures by the officer's Commanding Officer. Such measures were apparently taken to prevent a reoccurrence of this nature.

Disposition: The Commission was satisfied with the police service's handling of the complaint.

Allegation: Improper Issuance of a Ticket

On September 1, 2002, the complainant stopped by the local fairground to drop off some awards for an event that the President of his organization was hosting. The complainant attempted to enter the grounds, however, an officer directed him to leave and would not let him in. The officer then issued him a ticket (unknown charge). While this was happening, the complainant phoned the Programs Manager of the fairground who attended, and escorted him onto the grounds. The police closed the file with comments, i.e., that his complaint was about receiving a ticket.

Disposition: On review, the complainant states that his concern is not the ticket, but the fact that he had his accreditation that was displayed on his vehicle, yet he was not allowed onto the grounds.

The Commission panel decided to return the file for a limited investigation. Specifically, the police service was asked to conduct an investigation into the fact that the complainant was not allowed onto the fair grounds when he had his accreditation, documents and parking pass for the event. Due to the fact that the matter was not initially investigated, there was no statement from the involved officer. There may not have been any misconduct, but without some information from the involved officer the panel was not clear on all the events.

Allegation: Harassment and Intimidation

The officer was driving his vehicle while off duty when he witnessed a traffic infraction that involved the complainant's vehicle. The officer investigated by going to the complainant's place of business. The officer was advised that an employee had been driving the vehicle at the time. When asked, the complainant only provided the

employee's name, work schedule and told the officer he could get personal data directly from the employee. The officer kept insisting on getting the personal information that made the complainant angry and agitated. The officer felt threatened and called for back-up. The back-up officer arrived, then both officers left. They returned the following day to speak with the employee.

The complainant alleges that he was harassed and intimidated by the subject officer and that the officer would not leave his property when told to do so.

Disposition: The Review Panel determined that since the officer was off duty when he witnessed the traffic incident he should have reported this to the police service so that another officer could investigate. He became involved in a conflict of interest when he decided to investigate the incident in which he personally was involved.

The Panel further determined that the officer abused his authority when dealing with the complainant as he continued to request information. The members felt that any misconduct was minor in nature. The matter was returned to the police service to attempt an informal resolution.

Allegation – Improper Detention

The complainant has health challenges and carries medication at all times. The complainant was shopping at a Duty Free Shop and started to feel ill and rushed out of the store without paying for some merchandise.

A security guard had observed the complainant acting in a suspicious manner prior to entering the Duty Free Shop and while the complainant was inside. The security guard further observed that the complainant left the store without paying for the merchandise. When confronted by the security guard about the merchandise, the complainant attempted to re-enter the store to pay for them. The security guard contacted an on-duty police officer. The officer arrested the complainant for theft.

At the police station two other officers interviewed the complainant. The complainant alleges the she was traumatized and made physically ill by the ordeal.

Disposition: The Review Panel upheld the Chief's decision that the allegations were unsubstantiated.

First Nations Policing

The Constitution Act, 1867, assigned responsibility for the administration of justice to the provinces. Constitutionally and legislatively, Ontario is responsible for the delivery of policing services in all parts of the province, including First Nations.

In 1975, the Task Force on Policing lead to the establishment of a tri-partite arrangement for funding the Ontario First Nations Policing Agreement. The Ontario Provincial Police administer the program and provide support. There has been a gradual transfer of administrative responsibility from the OPP to First Nations governing authorities. Some of the functions, which previously had been the exclusive responsibility of the OPP, have become jointly administered; others have been assumed completely by First Nations.

Section 54 of the Police Services Act, states that, "with the Commission's approval, the Commissioner may appoint a First Nations Constable to perform specific duties" and further, "if the specified duties of a First Nations Constable relate to a reserve as defined in the Indian Act (Canada), the appointment also requires the approval of the reserve's governing authority or band council."

First Nations Police are responsible for enforcing provincial and federal laws and band by-laws in First Nations Territories.